

DECISION

J. J. Mitchell Jr.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548 *May II*

8774

FILE: B-191376

DATE: December 27, 1978

MATTER OF: Francisco Schulthess

DIGEST: [Claim for the difference in compensation between that of an alien employee and that of a United States citizen] is barred from consideration under 31 U.S.C. 71a since it was not received in this Office within 6 years from the date it accrued. Certificate of citizenship issued in 1976 stating claimant was United States citizen from birth merely affirms existing fact and does not give rise to any new claim which may be filed to avoid the bar of 31 U.S.C. 71a.

This action is the result of a request, by counsel for Mr. Francisco Schulthess, for reconsideration of decision B-191376, May 30, 1978. That decision sustained the disallowance of Mr. Schulthess' claim for compensation on the basis that it was barred from consideration by this Office under the act of October 9, 1940, ch. 788, 54 Stat. 1061, as amended by Public Law 93-604, approved January 2, 1975, 88 Stat. 1965, 31 U.S.C. 71a, since it was not received here within 6 years from the date it first accrued.

Mr. Schulthess, a retired employee of the United States Department of State, states that he was employed by the United States Government for 34 years until his retirement in 1968. All of his employment was at Manila, Philippines, and he was classified and paid as an alien employee during that employment.

He states that a United States Certificate of Citizenship from the U.S. Immigration and Naturalization Service was issued to him on April 8, 1976. The certificate states that he became a United States citizen at birth, August 26, 1914. Apparently, his citizenship was based upon his father's citizenship. As a result Mr. Schulthess is claiming the difference in compensation he received as an alien employee and that he would have received as a United States citizen during his employment.

In our decision of May 30, 1978, we pointed out that although it was unfortunate that Mr. Schulthess was unaware that he was a United States citizen by birth, the fact remains that his claim began to accrue at the time of his employment

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with United States Government and continued until his retirement in 1968. Section 71a of title 31, United States Code, bars from consideration all claims cognizable by the General Accounting Office which are not received in that Office within 6 years from the date the claim accrues.

Counsel for Mr. Schulthess requests reconsideration of the decision of May 30, 1978, and asserts that our conclusion that Mr. Schulthess' claim began to accrue during his employment was in error, and that the claim did not accrue until April 8, 1976, when the United States Government finally recognized Mr. Schulthess' citizenship. Thus, his claim would not be barred by 31 U.S.C. 71a. In support of this view, counsel refers to our decision 39 Comp. Gen. 20, 21 (1959), wherein it was held that in cases involving a record correction under statutes similar to 10 U.S.C. 1552, the statute of limitations, 31 U.S.C. 71a, runs from the date of the correction of the records.

We do not view this rationale to be applicable to Mr. Schulthess' case.

The record correction referred to in 39 Comp. Gen. 20, supra, was made pursuant to specific statutory authority, now codified at 10 U.S.C. 1552, which authorizes the Secretary of the military department concerned to correct any military record of that department when he considers it necessary to correct an error or remove an injustice. We are not aware of any such authority which would be applicable to Mr. Schulthess' case.

In any event, where a correction board action merely affirms the existing facts and does not change any basic fact, no additional rights accrue. See 39-Comp. Gen. 178 (1959) and 45 Comp. Gen. 538 (1966).

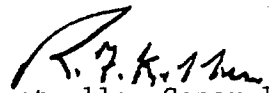
In Mr. Schulthess' case his claim began to accrue when he was employed as an alien employee by the United States Government. The certificate of citizenship he received in 1976, did nothing more than state that he was a United States citizen from birth. It did not change any basic fact involved in Mr. Schulthess' claim arising out of his employment as an alien employee of the U.S. Government.

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Thus, although Mr. Schulthess apparently did not know he was a United States citizen during the period of his employment, the fact remains that he was, and any claim that he had for compensation accrued during his employment. And, under 31 U.S.C. 71a, his claim would have to be received in this Office within 6 years from the date it accrued.

Accordingly, our decision of May 30, 1976, which bars his claim must be affirmed.

Counsel also requests information concerning Mr. Schulthess' appeal rights. Decisions of the Comptroller General are final and binding upon the executive branch of the Government, and there is no further administrative appeal other than to request that the Comptroller General reconsider his previous decision. Such a request should be based on new facts or evidence that were not previously considered. If a claim against the Government is to be pursued beyond the General Accounting Office, it must be done in a United States District Court or the Court of Claims. See 28 U.S.C. 1346 and 1491 (1976).


Acting Comptroller General
of the United States